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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No.

J. NAT and JENICE HAMRICK,

PETITIONERS

versus

COMMISSIONER OF INTERNAL REVENUE,

RESPONDENT

Appendix To

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

J. Nat Hamrick and
Jenice Hamrick, (Pro Se)

Hamrick & Hamrick
J. Nat Hamrick, Esq.
Counsel for Petitioners
P. O. Drawer 470
Rutherfordton,
North Carolina 28139

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UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 79-1578

J. Nat and Jenice B. Hamrick,

Appellants,

v.

Commissioner of Internal Revenue,

Appellee.

Appeal from the United States Tax Court, Charles R. Simpson, Tax Court Judge.

Submitted: December 12, 1980

Decided: March 6, 1981

Before PHILLIPS, MURNAGHAN and SPROUSE, Circuit Judges.

(J. Nat and Jenice B. Hamrick, Appellants Pro Se. Gilbert E. Andrews. Chief, Appellate Section; M. Carr Ferguson, Assistant Attorney General, Tax Division-Department of Justice; Jonathan S. Cohen; Jay W. Miller, Tax Division-Department of Justice; on brief for the Appellee.)

PER CURIAM:

J. Nat and Jenice Hamrick appeal the tax court's decision in a case involving their federal income tax liability for the years 1970, 1971, and 1972. The tax court decided that a loss claimed by them to be a business bad debt was in fact a nonbusiness bad debt deductible as short term capital loss. See 26 U.S.C. § 166 (d). The court also held that taxpayers' basis in the property in issue was $39,780 rather than $170,000, as claimed by the Hamricks. The court therefore ruled that deficiencies were due from the Hamricks for the years in question.

The Tax court thoroughly analyzed the issues presented in the case. Nothing the Hamricks assert in this appeal alters the validity of that court's judgment. We dispense with oral argument as the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument. We affirm the decision below

on the reasoning of the tax court. Hamrick v. Commissioner, T.C. Memo. 1979-72 (March 5, 1979, June 13, 1979).

AFFIRMED.

T.C. Memo. 1979-72

UNITED STATES TAX COURT

J. NAT and JENICE HAMRICK, Petitioners v. COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 7250-75. Filed March 5, 1979.

(1) P, a 41-percent shareholder in a family corporation, sustained a loss upon the foreclosure and sale of a one-half interest in property that was being farmed by such corporation and that she had mortgaged to secure loans for the corporation. Held, such loss resulted from a nonbusiness debt becoming worthless during the year.

(2) Since P acquired the property by gift, both parties agreed that P's basis in the property equaled its fair market value on Dec. 7, 1920. Held, such value determined.

J. Nat Hamrick, pro se.

Mathew E. Bates, for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

SIMPSON, Judge: The Commissioner determined the following deficiencies in income

taxes and additions to tax of the petitioners:

Year	Deficiencies	Additions Sec. 6651(a)(1) I.R.C. 1954[1]	Additions Sec. 6653(a) I.R.C. 1954
1970	$11,215.91	$1,121.59	$587.71
1971	14,595.49	1,459.55	759.02
1972	6,694.16	1,673.54	703.36

The petitioners concede their liability for the additions to tax under sections 6651(a)(1) and 6653(a) with respect to any deficiency determined by the Court; the only issues remaining for decision are: (1) Whether the loss the petitioner sustained upon the foreclosure and sale of a one-half interest in property that she had mortgaged to secure loans to a corporation which farmed such property is deductible as a business bad debt under section 166; and (2) what was the fair market value of the property on December 7, 1920.

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[1] All statutory references are to the Internal Revenue Code of 1954 as in effect during the years in issue.

FINDINGS OF FACT

Some of the facts have been stipulated, and those facts are so found.

The petitioners, J. Nat and Jenice Hamrick, are husband and wife who maintained their legal residence in Rutherfordton, N.C., when they filed the petition herein. They filed their joint Federal income tax returns for the years 1970 and 1971 with the Southeast Service Center, Chamblee, Ga.; their joint Federal income tax return for 1972 was filed with the Memphis Service Center, Memphis, Tenn. Mrs. Hamrick will sometimes be referred to as the petitioner.

On December 7, 1920, the petitioner's father conveyed a 936-acre tract of land in Bambery County, S.C., to the petitioner's mother by deed of gift. The land, known as the Crum Place (the property), consisted of high quality farming land suitable for the growing of cotton, pecans, asparagus, cucumbers, and other crops. The property also included some 20 houses for the farm's workers,

an overseer's home with six or seven bedrooms, a large barn, windmill, syrup mill, Lummus cotton gin, storage faciilities and packing houses for the crops, a well for water, and a privately constructed and maintained telephone line. The farm also maintained some mules and livestock.

On August 1, 1961, the petitioner's mother mortgaged the property, along with six other tracts of land, to secure a debt of Simon Brown's Sons, Inc. (the corporation). On October 30, 1963, the petitioner's mother conveyed a one-half interest in the property to the petitioner by deed of gift, reserving a life estate in herself. On September 28, 1964, the petitioner reconveyed her one-half interest in the property to her mother by deed of gift. On November 4, 1964, the petitioner's mother executed a new mortgage on the property to replace the mortgage of 1961. On November 27, 1964, the petitioner's mother reconveyed the one-half interest to the petitioner subject to a life estate. In

1966, the petitioner again reconveyed her one-half interest in the property to her mother, and her mother executed a new mortgage to replace the earlier mortgages on the property; thereafter, she reconveyed the one-half interest to the petitioner. Later in 1966, the petitioner joined in the execution of a junior mortgage on the property to secure a loan to the corporation. In 1967, the petitioner joined in the execution of a new junior mortgage to replace the 1966 junior mortgage on the property and to secure additional loans to the corporation. From July 23, 1966 until October 1, 1970, the petitioner and her brother owned the property jointly as tenants in common subject to a life estate in their mother.

From 1963 to 1972, the petitioner was a shareholder in the corporation, which was a family corporation. The capital stock of the corporation was owned as follows:

Stockholder	Percent of Stock Owned
Jenice Brown Hamrick	41
D. Stanley Brown	41
Zelma Brown	18

Zelma Brown is the petitioner's mother; D. Stanley Brown is the petitioner's brother, who ran the corporation and earned his living by such work. Under an informal arrangement, the owners of the property allowed the corporation to farm the property. The corporation owned all the necessary farming equipment, provided all the seed, fertilizer, labor, and supervision for the farm, and marketed all the crops from the property. During the years in issue, the petitioner received no rent from the corporation for the use of the property. However, she did receive pecans and other food from the corporation.

On October 1, 1970, the junior mortgage on the property was foreclosed upon, and the mortgagee purchased the property at the foreclosure sale for $200,000.

In their tax return for 1970, the petitioners deducted an ordinary loss of $170,000

attributable to the petitioner's loss of her one-half interest in the property and carried forward a net operating loss of $38,898 to 1971. Schedule D of such return included the statement: "Land placed as collateral on loan for brother's business. Loan not repaid and business bankrupt. Land was seized by referee to cover part of loss. Is ordinary loss under bad debt heading." In his notice of deficiency, the Commissioner reduced the petitioner's adjusted basis in the property to $32,180. He also determined that the petitioners realized a long-term capital loss of $32,180, subject to the limitation of section 1211, and that there was no net operating loss to carry forward to 1971.

OPINION

The first issue to be decided is whether the petitioner sustained an ordinary loss as a result of the foreclosure on her interest in the property. There is some confusion as

to the petitioners' position in this case.[2] On their return, they referred to the loss as a bad debt; but in their petition and in their brief in this case, they referred to it as a loss incurred in the carrying on of a trade or business within the meaning of section 165 (c)(1), although they rely on cases dealing with claims for bad debt deductions. The Commissioner, at trial and in his brief, now maintains that the loss must be treated as a nonbusiness bad debt.

Section 165(a) allows a deduction for any loss sustained during the taxable year that is not compensated for by insurance or otherwise, but section 165(c) limits the deductions allowable to individuals. Section

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[2] It is clear that the petitioners are not claiming that the loss was deductible under sec. 165(c)(2) as a loss incurred in a transaction entered into for profit, or that the loss was deductible under sec. 212 as an expense incurred for the production or collection of income, or for the management, conservation, or maintenance of property held for the production of income.

165 (c)(1) allows an individual a deduction for a loss incurred in a trade or business. However, the deduction for bad debts is set forth in section 166(a), which allows a deduction for a debt which becomes worthless during the taxable year.

The loss in this case was not sustained upon the foreclosure and sale of the property. The Supreme Court held in Putnam v. Commissioner, 352 U.S. 82 (1956), that a loss sustained by a guarantor unable to recover from the debtor is a loss from a bad debt to which the guarantor becomes subrogated upon discharging his liability as guarantor. By mortgaging her property to secure the loans, the petitioner was in effect placing her property as collateral for the loans and acting as a guarantor of the loans. The petitioner then became subrogated to the debt between the corporation and its creditors upon the foreclosure and sale of the property, and the loss she sustained when she was unable to recover from the corporation was a bad

debt loss deductible under section 166.

Moreover, in Spring City Foundry Co. v. Commissioner, 292 U.S. 182 (1934), the Supreme Court held that the predecessors of sections 165 and 166 are mutually exclusive; that is, a bad debt, although a loss, cannot be deducted under the general loss provisions of section 165. Therefore, we must hold that the loss the petitioner sustained upon the foreclosure and sale of her interest in the property is not deductible as a business loss under section 165(c)(1).

Section 166(d) provides:

"(d) Nonbusiness Debts.--

(1) General rule.--In the case of a taxpayer other than a corporation--

(A) Subsections (a) and (c) shall not apply to any nonbusiness debt; and

(B) Where any nonbusiness debt becomes worthless within the taxable year, the loss resulting therefrom shall be considered a loss from the sale or exchange, during the taxable year, of a capital asset held for not more than 6 months.

(2) Nonbusiness debt defined.--For purposes of paragraph (1), the term "nonbusiness debt" means a debt other than--

(A) a debt created or acquired (as the case may be) in connection with a trade or business of the taxpayer; or

(B) a debt the loss from the worthlessness of which is incurred in the taxpayer's trade or business."

Thus, we must decide whether the petitioner's claim against the corporation was a business or a nonbusiness debt within the meaning of section 166(d).

Section 1.166-5(b), Income Tax Regs., defines nonbusiness debts:

"(b) Nonbusiness debt defined. For purposes of section 166 and this section, a nonbusiness debt is any debt other than--

(1) A debt which is created, or acquired, in the course of a trade or business of the taxpayer, determined without regard to the relationship of the debt to a trade or business of the taxpayer at the time when the debt becomes worthless; or

(2) A debt the loss from the worthlessness of which is incurred in the taxpayer's trade or business.

> The question whether a debt is a non-business debt is a question of fact in each particular case. The determination of whether the loss on a debt's becoming worthless has been incurred in a trade or business of the taxpayer shall, for this purpose, be made in substantially the same manner for determining whether a loss has been incurred in a trade or business for purposes of section 165(c)(1). For purposes of subparagraph (2) of this paragraph, the character of the debt is to be determined by the relation which the loss resulting from the debt's becoming worthless bears to the trade or business of the taxpayer. If that relation is a proximate one in the conduct of the trade or business in which the taxpayer is engaged at the time the debt becomes worthless, the debt comes within the exception provided by that subparagraph. * * *[Emphasis added]"

In United States v. Generes, 405 U.S. 93 (1972), the Supreme Court held that in determining whether a bad debt has a "proximate" relation to the taxpayer's trade or business within the meaning of the regulations, we must consider the taxpayer's "dominant motivation" for extending the loan. 405 U.S. at 103. In that case, a 44-percent shareholder in a family corporation deducted loans he made to the corporation as a business bad debt, claiming that such loans were made for business reasons, that is, to preserve his salary as

president of the corporation. The Supreme Court said:

> "We conclude on these facts that the taxpayer's explanation falls of its own weight, and that reasonable minds could not ascribe, on this record, a dominant motivation directed to the preservation of the taxpayer's salary as president of Kelly-Generes Construction Co., Inc. [405 U.S. at 107.]"

The petitioner contends that she sustained an ordinary business loss upon the foreclosure and sale of her interest in the property. She asserts that the operation of the property was her "only business", but also states that she could not operate the property without the corporations. Yet, the corporation could not finance the business without the funds provided by the mortgaging of the property. Therefore, the petitioner concludes that the mortgaging of the property and the resultant foreclosure and loss were for business reasons. However, after consideration of all the evidence, we cannot conclude that the petitioner's dominant motivation for mortgaging the property, and subsequent subrogation to the claims against the

corporation, was for business reasons.

The phrase "trade or business", as used in the Federal tax laws, has a "common and well-understood connotation as referring to the activity or activities in which a person engages for the purposes of earning a livelihood." Folker v. Johnson, 230 F.2d 906, 907 (2d Cir. 1956). The petitioner has the burden of proving that her claim against the corporation qualified as a business debt. Rule 142, Tax Court Rules of Practice and Procedure; Welch v. Helvering, 290 U.S. 111 (1933); see Scifo v. Commissioner, 68 T.C. 714, 723 (1977). She does not allege that she was engaged in the business of farming the property, or that she was a farmer in general. The business of farming the property was conducted by the corporation and was not her individual business. Moreover, even though the petitioner was a 41-percent shareholder of the stock of the corporation that farmed the land, the business of the corporation is not attributable to her. It is a well settled principle that a share-

holder has a separate identity from the corporation and that the business of a corporation is not the business of its shareholders or offiers. Burnet v. Clark, 287 U.S. 410 (1932); Dalton v. Bowers, 287 U.S. 404 (1932); Omaha Nat. Bank v. Commissioner, 183 F.2d 899 (8th Cir. 1950), affg. a Memorandum Opinion of this Court. Mere participation in a corporation by owning stock does not place one in the business of the corporation. Even devoting one's time and energies to the affairs of a corporation is not of itself, without more, the trade or business of the person so engaged. Whipple v. Commissioner, 373 U.S. -93, 202 (1963). If the funds secured by the mortgages enabled the corporation to prosper, the petitioner might share in the profits as a shareholder of the corporation, but in that event, the loans merely enhance her dividends. Therefore, we hold that the petitioner has failed to show that the claim was a business debt because of her interest in the corporation.

Nor has the petitioner shown that the debt was proximately related to her interest as an alleged lessor of the property to the corporation. This Court has stated that ordinarily the rental of property constitutes a trade or business. Lagreide v. Commissioner, 23 T.C. 508 (1954); Hazard v. Commissioner, 7 T.C. 372 (1946). We recognize that it is not always necessary to show the actual receipt of rental income to establish that one is engaged in the trade or business of renting property. See, e.g., Crawford v. Commissioner, 16 T.C. 678 (1951). However, the nominal renting of property does not convert it into business use, and the courts have generally looked to the taxpayer's expectation of receiving a profit from the rental of property. See Johnson v. Commissioner, 19 T.C. 93 (1952); Crawford v. Commissioner, supra. Here, the petitioners admitted that they received no rental income from the property during the years in ussue, and they failed to prove that they ever received any

rental income from the property. Accordingly, we must conclude from the evidence presented that the "renting" here was nothing more than nominal and that the petitioner had no expectation of receiving a profit.

In addition, the petitioner has offered no evidence that there was any real leasing arrangement with the corporation. She has not introduced the terms of any lease with the corporation, the duration, if any, of a lease, nor evidence as to the amount the corporation would pay her under the arrangement. Mr. Hamrick testified that "if there was any surplus money, she could get it." Such an informal arrangement does not place the petitioner in the trade or business of renting the property to the corporation.

Indeed, an examination of all the facts and circumstances suggests that the petitioner allowed the corporation to farm her one-half of the property as an accommodation to her brother in order to preserve his job with the corporation. Mr. Hamrick testified that "We

had no alternative to this, because Stanley Brown had no way to live except running Simon Brown's Sons * * *." On this reocrd, we hold that since the petitioner was not engaged in either the trade or business of farming or renting the property, the loss she sustained upon the uncollectibility of the loans to which she was subrogated was a nonbusiness bad debt.[3]

The second issue for consideration is the fair market value of the property on December 7, 1920. Since the petitioner received the property as a gift from her mother, her basis in the property is determined under section 1015. Section 1015 (a) provides:

> "(a) Gifts after December 31, 1920.--If the property was acquired by gift after December 31, 1920, the basis shall be the same as it would be in the hands

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[3] The Commissioner did not argue that the foreclosure and sale of the property was a taxable transaction. See Helvering v. Hamel, 311 U.S. 504 (1941). Therefore, we give no consideration to that issue.

> of the donor or the last preceding owner by whom it was not acquired by gift, except that if such basis (adjusted for the period before the date of the gift as provided in section 1016) is greater than the fair market value of the property at the time of the gift, then for the purpose of determining loss the basis shall be such fair market value. If the facts necessary to determine the basis in the hands of the donor or the last preceding owner are unknown to the donee, the Secretary shall, if possible, obtain such facts from such donor or last preceding owner, or any other person cognizant thereof. If the Secretary finds it impossible to obtain such facts, the basis in the hands of such donor or last preceding owner shall be the fair market value of such property as found by the Secretary as of the date or approximate date at which, according to the best information that the Secretary is able to obtain, such property was acquired by such donor or last preceding owner."

The parties have agreed that the petitioner's basis in the property should be determined by the property's fair market value on December 7, 1920.

The Commissioner determined that the value of the property on December 7, 1920, was $85 per acre. He based this determination on the report of a valuation expert. In preparing his report, such expert spent 3 days in the

area in which the property is located. He inspected the subject property, looked at other property in the general area, and talked with soil conservation specialists about soil studies they had just completed on the land. He then examined records of sales of farm land in the area from 1919 to 1922. The expert used about 13 comparable sales to determine that the fair market value of the property in this case in 1920 was $85 per acre. One sale he considered was a tract of land on the left border of the property that was sold on February 7, 1920, for $85 per acre. The expert recognized that the land on that property was very good and equal to the land on the subject property for the production of cotton. In some of the comparable sales, the land was sold for as little as $50 per acre. In reaching his conclusion, the expert did not include any amount for the improvements on the property.

The petitioner asserts that the fair market value of the land on December 7, 1920,

was at least $250 per acre, and she contests the Commissioner's value on the ground that his expert failed to consider all the relevant facts in arriving at his estimate. Particularly, she contends that the Commissioner's expert failed to take into consideration the quality of the land on the subject property, the size of such property, and the extensive improvements thereon. To support her position, the petitioner called two witnesses, one of whom expressed the view that the property was worth $250 per acre in 1920. Such witnesses also testified as to the quality of the property and the improvements thereon. However, neither witness had any expertise in valuing land, nor did either support his opinion by reference to comparable sales in the area.

In this case, we are impressed by the opinion of the Commissioner's expert. He was qualified to express an opinion on the value of land, and his opinion was based on a thorough and careful analysis of comparable

sales in the area--a generally accepted method of valuing land. Crane v. Commissioner, 49 T.C. 85, 94-95 (1967); Huron Building Co. v. Commissioner, 15 B.T.A. 1107, 1114 (1929), affd. sub nom. Tracy v. Commissioner, 53 F.2d 575 (6th Cir. 1931), cert. denied 287 U.S. 632 (1932). His opinion appears to have taken into consideration both the quality of the property and its size. On the other hand, the petitioner's witnesses lacked expertise, and their opinions were not grounded on objective facts.

The most significant difference of opinion involved the treatment of the improvements. Under section 1016, the basis of the property must be adjusted to take into consideration any depreciation allowed or allowable on those improvements. See Pittsburgh Terminal Corp. v. Commissioner, 60 T.C. 80, 87 (1973), affd. in an unpublished opinion 500 F.2d 1400 (3d Cir. 1974); Moorhead & Sons, Inc. v. Commissioner, 40 T.C. 704, 713 (1963). The Commissioner determined

that all such improvements would be fully depreciated by 1970, and the petitioner has presented no evidence to indicate otherwise. Accordingly, the Commissioner's expert was correct in basing his opinion on the value of the land without taking into consideration any improvement thereon, and since it is clear that the petitioner's witnesses included the value of the improvements in their opinions, such fact provides another reason for not accepting their opinions.

In conclusion, we find and hold that the value of the property on December 7, 1920, was $85 per acre. In his notice of deficiency, the Commissioner determined the total value of the petitioner's interest in such property to be $32,180. However, his expert found that the total value of her interest was $39,780, and in his brief, the Commissioner adopted such value. This, in their computations for decision in accordance with Rule 155, Tax Court Rules of Practice and Procedure, the parties should use the figure

of $39,780 as the basis of the petitioner's interest in the property.

Decision will be entered under Rule 155.

Q Now, suppose that his other land that was sold there is open land with good fertile land, how much more would you say that this working plantation with everything on it would be worth?

A Well, I'd rather take it on a percentage. I'd say, if you have a dollar over here, you'd get about four dollars over here (Indicating) per acre. I'd say about four to one, but I'm taking the poorest part of Barnwell County against the better part of Barnwell County.

Q Now, if Mr. Bates has sales somewhere in this area for open land that was bringing sixty to eighty dollars an acre and my father-in-law had a complete working plantation with cotton gin and everything on it, how much more would you say that it would be worth than the other?

A I'd say at least three or four times.

Q How old would you have been in 1920?

A Well, I got married when I was nineteen and that was 1915, so that would have made me about twenty-three or twenty-four years old. We moved to Columbia in '23. We were living there--I was born and raised in Bambery which is the county seat and my father was a lawyer.

MR HAMRICK: That was just a few miles from this property?

A Yes.

Q Do you know if there was any other land in the area where the Crum place was located that, as far as the soil was concerned was as good as the Crum place?

A There might have been some land, but I would say that I would pick that out, that and the Guess property as two of the best pieces of property in the county, . . .

Q Well, from what you know about land being traded in this area, do you have an opinion satisfactory to yourself, as to what that place was worth in December, 1920?

A Well, that's been a good long time and land varied in the price at that time, but that was extra good land and so many buildings and all, I know that it was worth two fifty, at least.

Q Two hundred fifty dollars an acre?

A Yes, and this Guess place out here, that's good land too, that is all worth about that price.

Q Would you say that that was the two best pieces of land around?

A Well, it was extra good land because they were good farmers and they knew what they were doing and they kept the land in good shape. I bought a lot of land myself. I Bought three hundred eighty-five acres a good bit cheaper than that but it was poor

land, a lot of it was poor land and you had to build it up.

Record of Hearing at Winston-Salem, North Carolina on September 12, 1977, Page 10-12

Testimony of James Cox

BY MR. HAMRICK:

Q Mr. Cox, you say that you only considered the value of the land itself with no improvements.

A That is correct.

Q So if it should appear from evidence later that this property contained a cotton gin, a seed storage warehouse, a -- 10 dwellings and a cotton seed storage -- and a grain storage warehouse, that would change your valuation as to the property, would it not, sir?

A It would change the value -- I would be valuing a business and not bare farmland.

Q I see. Now, in your comparables you went to the public records, I believe.

A Yes, sir.

Q And you were not able to verify from people who bought and sold this land actually what was paid for it, were you?

A No, sir, I was not, because --

Q So long ago.

A -- they were not living.

Q Yes, sir.

A It was, you know, 1920, it was very difficult to find people that -- the sellers and buyers, and that's why. I realize normally that it should be done.

Q Yes, sir, I understand. Now, the prices that you got here were gotten off of tax stamps or recitals in deeds, or something of that sort.

A That is correct.

Q Now, I believe you said in your report that this was a very good cotton plantation.

A Yes, sir, it was very good.

Q So a value of the whole property, with all the improvements on it -- the houses and the cotton gin and grain storage and so forth -- if you had been called to evaluate

that in 1920, to value the whole property, you would have certainly taken into consideration the value of the improvements, wouldn't you?

A Yes, sir, I would have if I'd been called to value the business rather than the --

Q Yes.

A -- land only.

Q Yes, sir. I believe this land's located about six or seven miles from Denmark, South Carolina?

A Yes, sir. I have my location map in my report.

Q Yes, sir.

A Good accessibility.

Q Thank you, sir.

Record of Hearing at Winston-Salem, North Carolina on September 14, 1977, pages 13-15

Testimony of D. Stanley Brown

A I assisted in its supervision.

Q Now, Mr. Brown, will you tell us what was on the Crum place other than the land in December of 1920.

A I believe that there were about 20 farm houses where the people that worked for us lived. In addition to that there was an overseer's home that was a very nice home, indeed. It was a large house -- it's still there -- and I would say that that house -- it was one and a half stories high and I would say that it had about six or seven bedrooms. It had bathroom facilities, it had a windmill for -- to supply water, it had a very large barn in the yard where the mules were kept and the livestock, it had a cow barn on the back of the place, it had a syrup mill, it had a gin house that was modern at that time. It had modern facilities.

Record of Hearing at Winston-Salem, North Carolina on September 14, 1977, pages 13-15 continued, Testimony of D. Stanley Brown

Q When you say "gin house," are you referring to cotton gin?

A It was a cotton gin, yes, sir, and it was operated -- it had been converted from a boiler to electrical. It was operated with electrical motor, electric motors. There was a Lummus cotton gin, was the make of the gin. It had -- I'd say it had a good deep well for water. It had something that was rather unique to the farm. We built a telephone line all the way from Southern Bell's mainline in Denmark to the Crum place, a distance of about six miles, and we owned and maintained that line and kept it -- had to keep it -- in other words, we had to put up the poles and had to keep the line in workable order, so that we could use -- in order to keep from having to go out there to contact the foreman and to give orders. It had an

asparagus packing house, because we were growing asparagus on the farm. Of course, it had its horses and mules and buggies and wagons and --

Q That's not relevant to this.

A -- that type of thing, the farming equipment that went with the farm. But on the land itself -- of course, there were certain crops that were planted on the farm that were no -- in other words, like asparagus. You planted asparagus once every 15 years. Well, it had a certain acreage of asparagus where the crowns were there and then it had a pecan orchard, a very large pecan orchard, and those were grafted trees that were Schleys and Stewarts. They were very heavily, heavy producting trees. Then it had a pecan orchard that lined the road all the way through the place on both sides of the

highway. I'm trying to give you --

Q Did you have any seed storage facilities, Mr. Brown?

A Sir?

Q Did you have any cotton seed storage facilities?

A We had storage facilities for all farm products on the place. We had storage facilities for where we kept the containers for the cucumber, when we harvest them, cucumber crates -- or they were -- in those days they were not tubs, they were baskets. We had a cucumber basket container storage. We had feed storage and -- where we stored the crops for the livestock and for sale.

Record of Hearing at Winston-Salem, North Carolina on September 14, 1977, page 16-17

Testimony of D. Stanley Brown

Q Now, Mr. Brown, you have described improvements on the property. Would you describe the land itself and any --

A The land itself?

Q Yes, sir.

A I shall do my best, sir. In our area of the South Carolina the quality of land varies considerably. There will be land that is extremely valuable and next to it will be land that is extremely invaluable. The Crum place was unique in that there was approxiamtely a thousand acres of all good land, which was something that was very, very unusual, to find a large plantation where there was very little of what we called bone, land that was unproductive. And of the entire approximate thousand acres in the Crum place -- I think there was somewheres around 980 acres -- I would estimate that there was not more

Record of Hearing at Winston-Salem, North Carolina on September 14, 1977, page 16-17, continued, Testimony of D. Stanley Brown

than 12 acres of bone. We gave that to the colored people to use for a baseball field to play -- to have their games and recreation in -- because we didn't even attempt to farm it. It was like a little sand -- sandy area. But there was very little wooded land. . . .

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Testimony of J. Nat Hamrick

Q During the three years in issue, 1970, 1971 and 1972, did either you or Mrs. Hamrick receive any rental income from the Simon Brown's Sons, Incorporated, for the use of the Crum place?

A No, sir. The only thing that we received were pecans and food and things like that. There was not enough money realized anywhere to pay us any income. The whole thing was in jeopardy at that time.

MR. BATES: No further questions, Your Honor.

THE COURT: All right. You may step down as a witness, Mr. Hamrick. Thank you.

THE WITNESS: Thank you, sir. I might say one other thing, if I can.

THE COURT: All right.

THE WITNESS: I had no alternative -- when my wife's mother gave her the Crum place, I was not able to farm it. I was practicing

law and I had no surplus funds to farm it; I couldn't farm it. I had no way to farm it. She only had a half interest. So I -- there was nothing we could do except let Simon Brown's Sons farm it and if there was any surplus money, she could get it; and there was nothing that we could do except pledge the property for Simon Brown's Sons, cause it was a valuable piece of property and without it Simon Brown's Sons couldn't run. I had no way to farm it. I couldn't buy the seed, I couldn't buy the fertilizer, I couldn't do anything with it. So to get any income out of it at all, or get the hope of future income, all I could do was say to my brother-in-law that's running Simon Brown's Sons, "all right, we'll pledge the place for you. You run it and maybe we'll get some income out of it in the future." That's

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all I could do. We had no alternative to this, because Stanley Brown had no way to live except running Simon Brown's Sons and Simon Brown's Sons couldn't run unless this place was pledged cause you couldn't get the money. You're borrowing from hand to mouth and Peter to pay Paul to get seeds and fertilizer and stuff. That's the reason it was done that way.